

OCT 31 1978

MICHAEL RODAK, JR., CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

\_\_\_\_\_  
No. 77-1051  
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BESSIE B. GIVHAN,

v.

*Petitioner,*

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT ET AL.,  
\_\_\_\_\_  
*Respondents.*

On Writ of Certiorari to the United States  
Court of Appeals for the Fifth Circuit

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**SUPPLEMENTAL BRIEF FOR PETITIONER**  
\_\_\_\_\_

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Petitioner files this supplemental brief for the purpose of identifying and describing three rulings of the Court which bear on (1) its jurisdiction to consider one of the issues raised by respondents, and (2) whether, in any event, this Court should decline to consider that issue as a matter of sound judicial discretion.<sup>1</sup>

Respondents have urged that if the judgment of the court of appeals is not affirmed, then this Court should remand this case to the district court for a factual finding as to whether the school district would have refused to renew Mrs. Givhan's contract even in the absence of

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<sup>1</sup> On October 30, 1978, petitioner's counsel telephoned respondents' counsel and advised him of the contents of this brief in order to offset the delay involved in printing and then serving the brief by mail. A typewritten draft of this supplemental brief was also served by mail on that date.

her protected conduct. See *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977). In our reply brief we stated that the *Mt. Healthy* remand issue, "which is not framed by the petition for certiorari, should not be considered since it has already been decided below and since it is a simple factual issue presenting no important question of federal law." (Reply Br., p. 8.)

(A) The following two decisions show that this Court lacks jurisdiction to consider the *Mt. Healthy* remand issue. In *Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 61 n. 11 (1975), the respondent presented an alternative argument to the effect that if the court of appeals' decision were not affirmed, the case should be remanded to the district court for trial of issues relating to petitioner's motive. This Court noted that the point was not raised in the petition or brief in opposition, nor made the subject of a cross petition. The Court concluded that "we will not consider the argument when raised in this manner." It pointed out that the judgment of the court of appeals would have effectively ended the litigation whereas respondent's argument, if accepted, would require altering the judgment "rather than providing an alternative ground for affirming it."<sup>2</sup>

In *FEA v. Algonquin*, 426 U.S. 548, 560 n. 11 (1976), the court of appeals had invalidated an entire program for imposing licensing fees on imported petroleum. In this Court respondents urged that the court of appeals' judgment should be affirmed, and, alternatively, that part

<sup>2</sup> In the case at bar the judgment of the court of appeals (Pet. App. C, pp. 41a-42a, 20a & n.19) reversed the judgment of the district court and remanded this case to the district court for a determination whether respondents' decision to terminate Mrs. Givhan satisfied the requirements of the circuit-wide desegregation decree. *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1970) (en banc). Respondents' *Mt. Healthy* argument, if adopted, would require a change in the scope of the remand and consequently alteration of the judgment of the court of appeals.

of the plan was inconsistent with the requirement of Article I that import duties be uniform throughout the United States. This Court concluded that respondents' alternative argument would "represent not an affirmance of the judgments below, which effectively invalidated the entire scheme and its implementing regulations, but rather a modification of those judgments." The Court ruled that "since respondents filed no cross-petition for certiorari, they are at this point precluded from seeking such modification" of the judgments below. *Id.*

(B) The following case demonstrates that even where this Court may have jurisdiction to consider an issue raised by a respondent, it "decline[s] to entertain" such an issue where the answer is unclear and the issue is not certworthy. In *United States v. Nobles*, 422 U.S. 225, 241 n. 16 (1975), this Court stated that "we do not consider . . . [respondent's] contentions worthy of consideration. Each involves an issue that is committed to the trial court's discretion. In the absence of a strong suggestion of an abuse of that discretion or an indication that the issues are of sufficient general importance to justify the grant of certiorari we decline to entertain them." *Id.*

Respectfully submitted,

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